

FINAL OUTCOME OF THE 1990 DISTRICTING AND APPORTIONMENT PLAN

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The redistricting plan was submitted to the Legislature on January 11, 1993, fulfilling the requirement that it be submitted by the tenth legislative day. House Joint Resolution No. 5 was used as the vehicle for the House and Senate State Administration Committees to comment on the plan.

A joint committee briefing was held January 26, 1993. The House State Administration Committee considered the plan in hearings on January 26, 1993 and January 28, 1993 and passed the House on January 29, 1993. The Senate State Administration Committee held a hearing on the bill February 4, 1993 and the committee made amendments to the resolution. The resolution passed the Senate and returned to the House on February 8, 1993.

The amendments to House Joint Resolution No. 5 were concurred by the House and the resolution was filed with the Secretary of State on February 10, 1993.

The Districting and Apportionment Commission considered the Legislature's comments at a February 11, 1993 meeting and a February 17, 1993 conference call and adopted 5 of the 11 amendments. The final plan was prepared and submitted to the Secretary of State on February 24, 1993. The submittal fulfilled the Commission's mandate, the reapportionment plan became law, and the Commission was dissolved. The plan went into effect for the filings for the 1994 primary and general elections. The districts are in effect on the first day of the 1995 legislative session.

A challenge to the Districting and Apportionment Plan was filed January 12, 1996 in United States District Court for the District of Montana - Great Falls Division. *Earl Old Person v. Cooney*, Civ. No. CV-96-0040GF-PGH. The case went to trial on March 16, 1998.

A decision was rendered on October 28, 1998. The Court found that the Commission did not discriminate against Montana Indians and that the 1992 districting plan did not have the effect of discriminating against Montana's Indians. The Court held that the plaintiffs had not proven that nonIndians usually vote as a bloc to defeat Indian-preferred candidates. It found that most Indians vote as Democrats and that in many areas of the state and in many elections the preferred candidates win. Thus, it could not find that the Indians in Montana have less than equal access to the electoral process than do nonIndians.

The Court noted that the Voting Rights Act is not a guarantee for minorities to have candidates elected in equal proportion to their percentage in the population, but rather that it guarantees that minorities must have an equal opportunity to elect candidates of their choice.

An appeal was filed on March 8, 1999, by the ACLU on the claims involving the Blackfeet and Flathead Indian Reservations area of the state. On August 9, 1999, a three-judge 9th Circuit Court panel heard oral arguments on the challenge.

On October 27, 2000, the panel rendered its decision on Old Person v. Cooney (No. 98-36157), that Montana's 1992 redistricting plan was not adopted with discriminating purposes in violation of 42

U.S.C. 1973 (2). However, the district court erred in its application of the third test of *Thornburg v. Gingles*, 478 U.S. 30 (1986) in its finding that the white bloc voting was not legally significant. The district court also erred in finding proportionality between the number of legislative districts in which American Indians constituted an effective majority and the American Indian share of the voting population within the state. These errors in combination may have affected the district court's final ruling that there was no dilution of American Indian voting strength. The case was remanded back to federal district court.

On November 29, 2000, the plaintiffs submitted a motion for entry of judgment, to enjoin as parties the 2000 Districting and Apportionment Commission members, and for appropriate relief by the next election in 2002. (The 2000 legislative redistricting plan will not be in effect until the 2004 election.) The state entered its opposition to the plaintiffs' motion for entry of judgment, joinder of the 200 Commission, and implementation of remedy on December 18, 2000.

In June 2001, U.S. District Judge Phillip M. Pro of Las Vegas was appointed to the case to replace Judge Paul Hatfield who had died since rendering his decision. In an Order dated July 2, 2001, the plaintiff's motion for entry of judgment on remand and implementation of a remedy was denied, the motion to enjoin the Montana Districting and Apportionment Commission as a party was denied, and a trial date of Monday, November 5, 2001 was set to "consider evidence pertaining strictly to the issue remanded by the Ninth Circuit [C]ourt of Appeals relating to the trial court's previous finding of proportionality and whether considering the totality of circumstances, American Indian voting strength was diluted by the 1992 Redistricting Plan...."

Judge Phillip Pro rendered his decision on Old Person v. Brown on January 24, 2002, (No. 02-35171). His decision favored the state and found that no vote dilution has been demonstrated in the Flathead and Blackfeet Reservation districts that were created in the 1990 Redistricting Plan. The Plaintiffs appealed the decision on February 4, 2002. Oral argument before the United States Court of Appeals Ninth Circuit will be held on August 7, 2002.

The state prevailed in an unanimous Circuit Court opinion filed December 4, 2002. The court concluded that the "district court did not clearly err in determining that the totality of circumstances did not establish vote dilution in the districts where plaintiffs resided" and affirmed Judge Pro's District Court decision. The plaintiffs' petitioned for rehearing and rehearing en banc and were denied on April 23, 2003.

The plaintiffs filed a petition for a writ of certiorari with the United States Supreme Court on August 18, 2003, on the following questions:

1. Whether the Court should vacate this case on the grounds of mootness and remand with a direction to dismiss because the 1993 legislative redistricting plan challenged in the complaint has been superseded by a new redistricting plan based upon the intervening 2000 census.
2. Whether the decision of the court of appeals conflicts with the decision of this Court and those of other United States court of appeals by failing to give the required weight to proof of the factors identified in *Thornburg v. Gingles*, 478 U.S. 30 (1986), and the legislative history as most probative of a violation of Section 2 of the Voting Rights Act.
3. Whether the decision of the court of appeals conflicts with the decisions of this Court and those of other United States court of appeals by placing primary reliance upon the election of minority candidate after the commencement of the litigation who had no major party opposition.
4. Whether the decision of the court of appeals conflicts with the decisions of this Court and those of other United States court of appeals because of its failure to consider all relevant evidence of

minority vote dilution.

5. Whether the lower court erred in finding that the challenged redistricting plan was not adopted with a discriminatory purpose.

On November 17, 2003, certiori was denied by the United State Supreme Court.